

Appl. No. 10/699,470
Docket No. 9406
Amtd. dated September 1, 2006
Reply to Office Action mailed on June 1, 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 1, 2, 4, and 6 - 14 are pending in the present application. No additional claims fee is believed to be due.

Claims 1 and 4 have been amended to more clearly define the volatile substance controlling composition in accordance with the teachings of the specification, for example, at page 1, lines 12-13. New claims 13 and 14 have been added.

Since these changes are believed to be fully supported by the specification and claims as originally filed and no new matter is intended or believed to be involved, entry is believed to be in order and is respectfully submitted.

Rejection Under 35 USC §102 Over Kobayashi

Claims 1, 2, 4 and 7-10 have been rejected under 35 U.S.C. 102(b) as being anticipated by the Kobayashi patent (JP 60-018,171) as set forth in the last office action and further discussed below. The Office Action asserts that Kobayashi teaches a carrier that are films/plates having random holes or mesh or agglomerations of porous materials. The Office Action further asserts that Kobayashi teaches association of the fragrance component to the carrier by immersing or spraying and these approaches create contacts of the fragrance to the sorbent, and thus constitute impregnating according to the instant invention.

However, as will be set forth in detail below, it is believed that the volatile substance-controlling compositions defined by claim 1 are not anticipated by Kobayashi. Accordingly, this rejection is traversed and reconsideration is respectfully requested.

Kobayashi relates to slow-release fragrance agents that are capable of slowly releasing fragrances from thermoplastic resin bodies over long periods with a constant aroma. In other words, fragrance release requires no activation and is continuous at ambient conditions. This reference, however, does not teach or even suggest a dual-purpose volatile substance controlling composition involving volatile substance sorption directly linked to fragrance release. That is, minimal or no fragrance is released under

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ambient conditions. Rather, the release of fragrance is triggered by exposure of sorbent to a volatile substance. As a result, the composition of claim 1 remains stable for a substantial period of time with minimal or no loss of fragrance under typical use conditions in the absence of a volatile substance. This is contrary to Kobayashi which teaches that it is desirable that the initial aroma and the aroma during use be uniform. (See page 2, last paragraph).

The Office Action has asserted that the volatile substance-controlling compositions of claim 1 are anticipated by Kobayashi. Applicants defer to the Rule 132 Declaration of Inventor Bruce Tepper which clearly shows volatile substance sorbtion directly linked to fragrance release. Particularly, the following samples were tested: (1) Fragrance Dosed Sorbent--a sorbent (CCC F600) loaded with a PRM (ethyl butyrate); (2) BM Malodor Standard--a volatile substance (AMM1--7 component version, an Analytical Malodor Model developed by The Procter & Gamble Company comprising 7 volatile components); and (3) BM Malodor Standard with Fragrance Dosed Sorbent--ethyl butyrate loaded CCC F600 with AMM1.

The charts presented therein illustrate that the presently claimed volatile substance-controlling composition does not utilize slow-release fragrance agents as taught by Kobayashi. Rather, volatile substance sorption is directly linked to fragrance release, i.e. release of the fragrance is triggered by exposure of sorbent to one or more volatile substances. For example, Chart 1 is the headspace profile of ethyl butyrate loaded CCC F600. Chart 1 demonstrates the stability of ethyl butyrate loaded CCC F600, i.e. the ethyl butyrate is almost completely retained by the sorbent. Chart 2 is the headspace profile of the malodor standard. Chart 3 is the headspace profile of ethyl butyrate loaded CCC F600 with AMM1. Chart 3 demonstrates sorption of AMM1 (i.e. reduction in peaks) by ethyl butyrate loaded CCC F600. Also, the substantial level of ethyl butyrate in headspace demonstrates displacement of ethyl butyrate by AMM1 components. Thus, Kobayashi's teaching of a constant or uniform release of the fragrance component teaches away from the claimed invention which centers on a fragrance component impregnated onto the surfaces of a sorbent where release of the fragrance component is triggered by exposure to a volatile substance.

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Anticipation under 35 U.S.C. 102 requires the disclosure in a single prior art reference of each element of the claims under consideration, *Alco Standard Corp. v. TVA*, 808 F.2d 1490, 1 U.S.P.Q.2d 1337 (1341) (Fed. Cir. 1986). Because Kobayashi fails to teach every element of independent claim 1, Applicants assert that independent claim 1 is in condition for allowance. Further, because claims 2, 4, 7-10 and 13-14 depend directly or indirectly from claim 1, they too are not anticipated by Kobayashi and therefore, are in condition for allowance.

Rejection Under 35 USC §103(a) Over Kobayashi

Claims 8 and 9 have been rejected under 35 USC §103(a) as being unpatentable over the Kobayashi patent (JP 60-018,171) as applied to Claims 1, 2, 4, 7 and 10 above, and further in view of one of the following US patents: 5,556,394; 5,554,144; 5,554,143; 5,554,142; 5,643,588; 5,624,426; 5,609,587; 5,607,760; 5,575,784; 5,558,661; 5,997,521; 5,968,025; 5,906,603; 5,957,906; 6,118,041; and 6,107,537.

First, the Office Action states that the Kobayashi patent teaches the volatile substance-controlling composition as discussed above. The Office Action also asserts that the Kobayashi patent teaches incorporating this composition into an article (page 5, last paragraph). The Office Action reasons that the Kobayashi patent does not explicitly describe the use of such compositions in various structures as claimed but that such is implied in the disclosure. The Office Action then asserts that each of the aforementioned US patents teaches the layered odor-absorbing structure as claimed and it would have been obvious for one having ordinary skill in the art to incorporate the composition in the structure taught in any of the aforementioned US patents in order to produce an article that provides dual function: odor or volatile substance-absorbing as well as fragrance releasing.

In order to establish a *prima facie* case of obviousness, three requirements must be met. MPEP §2143. First, there must be some suggestion or motivation, either in the cited references or in the knowledge generally available to one ordinarily skilled in the art, to modify the reference. *Id.* Second, there must be some reasonable expectation of success. *Id.* Third, the cited references must teach or suggest all of the claim limitations. *Id.*

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Applicants respectfully traverse this rejection because the Office Action fails to establish a *prima facie* case of obviousness.

As detailed earlier, Kobayashi simply fails to teach or suggest each of the elements that are required by the present invention. Kobayashi focuses on slow-release fragrance agents that are made by impregnating blended fragrances comprising multiple fragrance components into composite impregnable bodies comprising one, two or more kinds of thermoplastic resins for fragrance impregnation and carriers for fragrance impregnation. Kobayashi still fails to teach or suggest where such a fragrance component is released primarily in the presence of a volatile substance that is then adsorbed by the sorbent. Kobayashi simply fails to teach these elements which are key to the present invention. Rather, Kobayashi focuses on fragrances that are intended to be released slowly without external prompting resulting in a constant aroma. The present invention, however, primarily releases its fragrance component from the plurality of surfaces of the sorbent upon the introduction of a suitable volatile substance that needs to be controlled. One skilled in the art would easily recognize the slow-release fragrance agents of Kobayashi are quite distinct from the volatile substance controlling compositions employed in the present invention.

The Office Action once again cites multiple patents listed above that relate to layered odor-absorbing structures. None of these references individually teach or suggest those missing elements discussed above. Therefore, the deficiencies of Kobayashi are not resolved by their disclosures. Individually, each of the patents inadequately supplements the disclosure of Kobayashi such that the present invention still would not result. In fact, one skilled in the art would have merely arrived at a layered odor-absorbing structure that contains a thermoplastic resin impregnated with certain slow-releasing fragrances in carriers. Thus, it is clear that the cited combination would not have led a skilled artisan to arrive at the present invention.

References relied upon to support a rejection under 35 U.S.C. 103(a) must provide an enabling disclosure, i.e., they must place the claimed invention in the possession of the public. *In re Payne*, 203 U.S.P.Q. 245 (CCPA 1979). Because the cited combination fails to teach all of the claim limitations of amended claim 1, the Office Action has not

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established a *prima facie* case of obviousness and has not placed the presently claimed volatile substance-controlling compositions in the possession of the public. Since claims 8 and 9 depend from claim 1, the cited reference also fails to teach all of its claim limitations. Therefore, in view of Inventor Tepper's declaration and the data presented therein, Applicant asserts again that claims 8 and 9 are nonobvious over the cited combination and is in condition for allowance.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejections under 35 U.S.C. 102(b) and 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1, 2, 4, 7 - 10, 13 and 14 is respectfully requested.

Respectfully submitted,

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